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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,871	08/05/2003	Dan Pharo		9752

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EXAMINER

COURSON, TANIA C

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/635,871	PHARO ET AL.	
	Examiner	Art Unit	
	Tania C. Courson	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. This application is claiming the benefit of a prior filed nonprovisional application under 35 U.S.C. 120, 121, or 365(c). Copendency between the current application and the prior application is required. It continues to appear that the priority claimed to the following applications are invalid due to the applications having been abandoned/expired prior to the filing date of October 24, 2001 of the application 10/056714 which was abandoned August 5, 2003:

- a) 09/307,104 – Filing date May 6, 1999 and Abandoned July 25, 2001;
- b) 60/084,591 – Provisional Application expired, and;
- c) 08/741,619 – Filing date October 30, 1996 and Abandoned July 1, 1999.

The only valid priority for the current application 10/635871 which was filed on August 5, 2003 appears to be that of application 10/056714 which was filed on October 24, 2001 and abandoned on September 16, 2003. The other priorities, as stated above, still appear to be invalid.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the post office address of Alex Humbree. A post office address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The post office address should include the ZIP Code designation. The post office address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The lengthy specification has not been checked, except for the following references to invalid priority claims, to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification. The examiner has noted the following disclosure objections:

- a) in reference to the added language found in the preliminary amendment, filed on 5 August 2003, in which a "Related Application" section was added to page 3, this section must be restated by deleting "co-pending" in line 3 due to invalid priority claim, and;
- b) on page 11, lines 16-22, "The formation of guide paths....Location Control System.", this section must be restated by deleting "co-pending", specifically in lines 17-18 and line 19, due to invalid priority claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Due to invalid priority claim, this rejection is stated as a 35 U.S.C. 102(b) rejection.

Claims 6-8, 10, 12 and 24-26 are rejected under 35 U.S.C. 102 (b) as being anticipated by Castle et al.

Castle et al. teaches a flooring system including the following:

- a) a ground cover substrate 20 having a transparent cover 18 thereon to define a pocket 24. Within the pocket 24 is an advertising substrate 34, which is considered to be the claimed "plurality/pair of rows of elements associated with said ground cover substrate which represent a physical standing position and being located in an orientation generally perpendicular to a direction of

movement". The advertising substrate 34 includes a first advertising informational message that is interchangeable with other informational messages. The message is raised presented at an upper relatively flat surface of the substrate 20, since it is positioned thereon. Also, the informational message may be applied to the substrate to create a 3-dimensional effect. Positioned below the substrate 34 is a sheet 32 formed of an open cell rubber sponge material. This sheet provides cushioning and prevents slippage. The substrate 34 and pocket 24 is mounted within a recess in the substrate 20.

With respect to the preamble of the claim 6: the preamble of the claim has not been given any patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Applicant should note that the claims include replete functional language not sufficient to patentably distinguish the claimed invention from the prior art. Examples of such functional language is the phrase "which represents a physical standing or waiting position", "each of said informational messages having content which is related to the facility at which the pedestrian individuals are being serviced", "representing a waiting location for the individual", "to define a pedestrian pathway", "said pathway is of sufficient width to receive a group of individuals and arranged to guide the group of individuals", all of which are directed to the intended use of the "elements" rather than its structure".

7. In case the applicant is able to provide proof of a proper priority claim, this rejection is stated as a 35 U.S.C. 102(e) rejection.

Claims 6-8, 10, 12 and 24-26 are rejected under 35 U.S.C. 102 (b) as being anticipated by Castle et al.

Castle et al. teaches a flooring system including the following:

- a) a ground cover substrate 20 having a transparent cover 18 thereon to define a pocket 24. Within the pocket 24 is an advertising substrate 34, which is considered to be the claimed "plurality/pair of rows of elements associated with said ground cover substrate which represent a physical standing position and being located in an orientation generally perpendicular to a direction of movement ". The advertising substrate 34 includes a first advertising informational message that is interchangeable with other informational messages. The message is raised presented at an upper relatively flat surface of the substrate 20, since it is positioned thereon. Also, the informational message may be applied to the substrate to create a 3-dimensional effect. Positioned below the substrate 34 is a sheet 32 formed of an open cell rubber sponge material. This sheet provides cushioning and prevents slippage. The substrate 34 and pocket 24 is mounted within a recess in the substrate 20.

With respect to the preamble of the claim 6: the preamble of the claim has not been given any patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a

self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Applicant should note that the claims include replete functional language not sufficient to patentably distinguish the claimed invention from the prior art. Examples of such functional language is the phrase "which represents a physical standing or waiting position", "each of said informational messages having content which is related to the facility at which the pedestrian individuals are being serviced", "representing a waiting location for the individual", "to define a pedestrian pathway", "said pathway is of sufficient width to receive a group of individuals and arranged to guide the group of individuals", all of which are directed to the intended use of the "elements" rather than its structure".

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-3,5,13,14 and 16-18, 20-23 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Hensler et al. in view of Chien and Gehweiler et al.

Hensler et al. teach a floor mat (at least one ground cover substrate) with borders for indicating a path between the borders. The borders are arranged to be visible in low and high light conditions.

Hensler et al. do not teach an elongated element associated with the substrate and the borders each being a pair of rows/two generally parallel lines of small discrete elements being sufficiently low to said ground surface.

Chien, in figure 17, teaches that it is known to include elongated exit signs 59 on a ground surface. The sign 59 includes directional information in the form of an arrow.

Gehweiler et al. teach that it is known and desirable in the prior art to replace painted marking lines with rows of circular die cut indicating members (aisle markers). See col. 1, lines 24-37. The indicating members are secured by means of adhesive, which is temporarily covered by a removable liner. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by replacing the borders thereof with die cut members (either elongated or circular), since Gehweiler et al. teach that die cut members are an alternative means for designating a walkway, as compared to the means of Hensler et al. The choice of which means to use (ie. the means of Hensler et al. or Gehweiler et al.) would depend upon the desires of the user/manufacturer and the available resources.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by including one or more of the ground signs of Chien on the mat thereof, for the purpose of indicating the position of an exit relative to the mat. Such a modification would result in the borders extending from a location proximate the ends of the sign(s) from Chien. Also, the sign(s) of Chien would be raised above the mat of Hensler et al., since the sign(s) would be positioned thereon.

With respect to the preamble of the claims 1 and 13: the preamble of the claim has not been given any patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Applicant should note that the claims include replete functional language not sufficient to patentably distinguish the claimed invention from the prior art. Examples of such functional language is the phrase "for defining an end of line of the group of pedestrian individuals", which is directed to the intended use of the "element" rather than its structure, "said pathway being of a width sufficient to receive a line of individuals", "said pathway being of a width sufficient to receive a line of individuals", "arranged in a desired orientation to conform to an existing environment", "representing a location for each successive pedestrian individual", "each of said informational messages having content which is related to the facility at which the pedestrian individual are being serviced", "do not constitute barriers to individuals", to conform to an

existing environment”, “represent an end of line position” all of which are directed to the intended use of the “elements” rather than its structure”

Regarding claim 22: It has been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Therefore, one skilled in the art would use an alternate type of ground cover substrates in order to suit the needs of the user of the device.

10. Claims 1-3,5,13-16, 18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensler et al. in view of Castle et al. and Gehweiler et al.

Hensler et al. teach a floor mat (at least one ground cover substrate) with borders for indicating a path between the borders. The borders are arranged to be visible in low and high light conditions. The borders are considered to be small discrete elements associated with the substrate.

Hensler et al. do not teach an elongated element associated with the substrate and the borders each being a pair of rows/two generally parallel lines of small discrete elements.

Castle et al. teach that it is known to include elongated signs on a ground surface. The sign includes a pocket within which is positioned a member having indicia thereon. Gehweiler et al. teach that it is known and desirable in the prior art to replace painted marking lines with rows of circular die cut indicating members (aisle markers). See col. 1, lines 24-37. The indicating members are secured by means of adhesive, which is temporarily covered by a removable liner.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by replacing the borders thereof with die cut members (either elongated or circular), since Gehweiler et al. teach that die cut members are an alternative means for designating a walkway, as compared to the means of Hensler et al. The choice of which means to use (i.e. the means of Hensler et al. or Gehweiler et al.) would depend upon the desires of the user/manufacture and the available resources.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by including one or more ground signs as taught by Castle et al. on the mat thereof, for the purpose of conveying additional information to a person walking on the mat. Such a modification would result in the borders extending from a location proximate the ends of the sign(s) from Castle et al. Also, the sign(s) of Castle et al. would be raised above the mat of Hensler et al., since the sign(s) would be positioned thereon.

With respect to the preamble of the claims 1 and 13: the preamble of the claim has not been given any patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. Kropa v. Robie, 88 USPQ 478 (CCPA 1951).

Applicant should note that the claims include replete functional language not sufficient to patentably distinguish the claimed invention from the prior art. Examples of such functional language is the phrase "for defining an end of line of the group of pedestrian individuals", which

is directed to the intended use of the "element" rather than its structure, "said pathway being of a width sufficient to receive a line of individuals", "said pathway being of a width sufficient to receive a line of individuals", "arranged in a desired orientation to conform to an existing environment", "representing a location for each successive pedestrian individual", "each of said informational messages having content which is related to the facility at which the pedestrian individual are being serviced", "do not constitute barriers to individuals", to conform to an existing environment", "represent an end of line position" all of which are directed to the intended use of the "elements" rather than its structure"

11. Claim 4 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Hensler et al. in view of Chien and Gehweiler et al. as applied to claims 1-3, 5, 13, 14, 16-18 and 20-23 above, and further in view of Phillips.

Hensler et al., Chien and Gehweiler et al. together teach all that is claimed, as discussed in the above rejection of claims 1-3, 5, 13, 14, 16-18 and 20-23, except for the elongate element and discrete elements being fastened to the mat by downwardly projecting threaded members.

Phillips teaches tactile members attached to a ground surface by screws.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Hensler et al. by utilizing screws to secure the die cut members to the mat, since Phillips teaches that screws are a known means for securing indicators to a supporting surface, such as wood or linoleum.

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12. Claim 9 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Castle et al. in view of Chien.

Castle et al. teach all that is claimed, as discussed in the above rejection of claims 6-8,10, 12 and 24-26, except for the informational message showing direction of movement.

Chien teaches that it is known for floor signs to provide directional indicia. See figure 17.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Castle et al. by providing the message thereof with directional indicia, since Chien teaches that such is desirable information to convey to individuals.

13. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castle et al.

Castle et al. teaches all that is claimed, as discussed in the above rejection of claims 6-8,10, 12 and 24-26, except for the claimed foam material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Castle et al. by making the material 32 from foam, since one having ordinary, skill in the art would recognize that foam is well suited for the stated purposes of the material 32 of Castle et al.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose location control systems ((*) signifies that a copy will not be provided in this application due to the fact that a

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copy has already been provided, in either an IDS or a PTO-892, during the prior prosecution of applications 09/307,104, 60/084,591 and 08/741,619):

- (*) Feasel (US 4,109,439)
- (*) Britt et al. (US 4,401,050)
- (*) Takahashi et al. (US 4,570,207)
- (*) Harrison (US 4,737,764)
- (*) Bresnan (US 6,025,773)
- (*) Schnee (US 2,680,698)
- (*) Shriever (US 4,385,586)
- (*) Ashoori (US 5,678,337)
- (*) Scott (US 4,296,650)
- (*) Carman (US 4,489,669)
- (*) Sanchez (US 4,888,896)
- (*) Hazen (US 5,568,785)
- (*) Wyckoff (US 4,040,760)
- (*) Nishino (US 3,969,720)
- (*) Baldwin (US 1,686,363)
- (*) McDevitt et al. (US 3,200,243)
- (*) Harrison (US 4,794,373)
- (*) Graf (US 1,521,941)
- (*) Arey (US 1,986,097)
- (*) Rockwell (US 2,065,872)

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(*) Ziph (US 3,317,168)

(*) Mahn (US 4,089,730)

(*) Colley (US 4,896,886)

(*) Honigsbaum (US 5,331,918)

(*) Peil et al. (US 5,437,907)

(*) Kozak et al. (US 5,516,227)

(*) Jeffrey et al. (US 5,626,094)

(*) Lindsey (US 2,085,807)

Cabrera et al. (US 6,576,074)

Plumly (US 5,167,087)

McDonald (US 4,687,369)

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (703) 305-3031. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (703) 308-3875. The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TCC
December 12, 2003